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DEPARTMENT OF COMMERCE

International Trade Administration

(A-201-837, A-570-954, C-570-955)

Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On May 22, 2015, the United States Court of International Trade (CIT) sustained the Final Redetermination issued by the Department of Commerce (Department), in which it determined that Fedmet Resources Corporation's (Fedmet) Bastion® magnesia alumina carbon bricks (MACBs) are outside the scope of the antidumping and countervailing duty orders on certain magnesia carbon bricks (MCBs) from Mexico and the People's Republic of China (PRC),<sup>1</sup> pursuant to the CIT's remand order in *Fedmet Resources Corporation v. United States*, Court No. 12-00215 (CIT February 23, 2015).<sup>2</sup>

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,<sup>3</sup> as clarified by *Diamond Sawblades*,<sup>4</sup> the Department is notifying the public

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<sup>1</sup> See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010) and *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010) (*Orders*).

<sup>2</sup> See Final Results of Redetermination Pursuant to Court Remand Magnesia Carbon Bricks from the People's Republic of China and Mexico, *Fedmet Resources Corporation v. United States*, Court No. 12-00215 (March 24, 2015) (Final Redetermination).

<sup>3</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>4</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

that the final judgment in this case is not in harmony with the Department's Final Scope Ruling on Bastion® MACBs<sup>5</sup> and is amending its final scope ruling.

EFFECTIVE DATE: June 1, 2015.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4261.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 3, 2011, Fedmet filed a request for a scope ruling claiming that its Bastion® MACBs are outside the scope of the *Orders*. The Department issued its Final Scope Ruling on July 2, 2012, and found that Fedmet's Bastion ® MACBs are included in the scope of the *Orders*.

Fedmet challenged the Department's Final Scope Ruling before the CIT. On May 30, 2013, the CIT sustained the Department's analysis pursuant to 19 CFR 351.225(k)(1) and (k)(2).<sup>6</sup> Fedmet appealed the CIT's judgment to the CAFC. On June 20, 2014, in a divided decision, the CAFC reversed the CIT.<sup>7</sup> The CAFC held that the references to "MACBs" in the (k)(1) sources resolved the inquiry and that the scope of the *Orders* did not extend to MACBs.<sup>8</sup>

On February 23, 2015, the Department issued its Final Redetermination and found that, pursuant to the CAFC's decision and the CIT's subsequent remand order, Bastion® MACBs

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<sup>5</sup> See "Memorandum from Barbara E. Tillman, "Certain Magnesia Carbon Bricks From the People's Republic of China and Mexico: Final Scope Ruling- Fedmet Resources Corporation" dated July 2, 2012 (Final Scope Ruling) at 2.

<sup>6</sup> See *Fedmet Res. Corp. v. United States*, 911 F. Supp. 2d 1348 (Ct. Int'l Trade 2013).

<sup>7</sup> See *Fedmet Res. Corp. v. United States*, 755 F.3d 912, 923 (CAFC 2014).

<sup>8</sup> *Id.* at 917.

imported by Fedmet were not subject to the *Orders*. The CIT sustained the Final Redetermination on May 22, 2015.<sup>9</sup>

#### Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 22, 2015, judgment in this case constitutes a final decision of that court that is not in harmony with the Department’s Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue suspension of liquidation of Bastion® MACBs imported by Fedmet pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, the Department is amending the Final Scope Ruling and finds Fedmet’s Bastion ® MACBs to be outside the scope of the *Orders*. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for Fedmet’s Bastion® MACBs. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Fedmet’s Bastion® MACBs without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

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<sup>9</sup> See *Fedmet Res. Corp. v. United States*, Court No. 12-00215 (CIT May 22, 2015) (judgment sustaining Final Redetermination).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) and 777(i)(1) of the Act.

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

Dated: June 11, 2015.

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